

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 ASAD GILANI,

5 Plaintiff,

6 Case No. 20-cv-1785-CS

7 -vs-

8 TENEO, INC., PIERS CAREY,

9 Defendants.  
10 -----x

11 United States Courthouse  
12 White Plains, New York

13 August 12, 2021  
14 10:47 a.m.

15 \*\* VIA TELECONFERENCE \*\*

16 B e f o r e:

17 HONORABLE CATHY SEIBEL  
18 United States District Judge

19 A P P E A R A N C E S:

20 ASAD GILANI, Pro Se Plaintiff

21 WRIGHT CONSTABLE & SKEEN, LLP  
22 Attorneys for Defendants  
23 BY: MARC A. CAMPSSEN

24 KLEIN, ZELMAN, ROTHERMEL, JACOBS & SCHESS, LLP  
25 Attorneys for Defendants  
BY: JANE B. JACOBS

1 THE DEPUTY CLERK: Good morning, Judge. Judge, this  
2 matter is Gilani v. Teneo. We have on the line the plaintiff,  
3 Mr. Asad Gilani, and representing defendants we have Ms. Jane  
4 Jacobs and Mr. Marc Campsen. Our court reporter, Darby, is on,  
5 and Andy is on.

6 THE COURT: All right. Good morning, everyone. We  
7 have several items of business this morning.

8 I received a letter from Mr. Campsen requesting the  
9 opportunity to take a deposition of Dr. Shifrin regarding the  
10 November 3rd, 2017, work restriction note that was mysteriously  
11 not produced when defendant subpoenaed the doctor, but then  
12 after plaintiff's deposition, and after the deposition cutoff,  
13 was produced with a later explanation after defendant had filed  
14 a summary judgment motion that it had been misfiled.

15 The defendant in its summary judgment motion says that  
16 the note is hearsay, and it is, but I considered it because the  
17 content of it could be rendered admissible at trial, for  
18 example, by Dr. Shifrin's testifying. So defendant is seeking  
19 an opportunity to take that witness's deposition.

20 Why shouldn't I let Mr. Campsen do that, Mr. Gilani?

21 MR. GILANI: I think the Judge, has the -- good  
22 morning. How are you?

23 THE COURT: Okay.

24 MR. GILANI: So basically, I think he can -- Dr.  
25 Shifrin can testify on the trial. We can engage and testify in

1 front of the jury. So both of the -- I mean, basically, he was  
2 sent a note in December by Mount Care, wherever he sent out the  
3 subpoena -- request for subpoena, and he -- the doctor talked to  
4 him, so he had an opportunity to forward that information to me,  
5 and then he had an opportunity to respond when he respond. So I  
6 am okay for Dr. Shifrin to testify as a witness in front of jury  
7 on the trial.

8 THE COURT: Well, I think I am going to allow the  
9 deposition. I don't see any prejudice from it, and although the  
10 document -- and the document was not produced until after the  
11 deposition cutoff.

12 Now, it's true that defendant could have asked me back  
13 when it was produced to take the deposition, but they instead  
14 chose to ask me to disregard it, which I didn't do; and, you  
15 know, this is going to be -- this is one deposition. It's going  
16 to be an hour or so.

17 MR. GILANI: Your Honor --

18 THE COURT: So -- I am sorry?

19 MR. GILANI: Go ahead. Sorry, Your Honor. I will ask  
20 you afterwards.

21 THE COURT: So I don't think it's -- I don't think  
22 there is any real prejudice from it. And who knows? Maybe it  
23 will nudge the parties toward resolving the remaining claims.  
24 So --

25 MR. GILANI: Basically, Judge, we thought the

1 discovery was completed. Even if he asked -- I mean, basically,  
2 when he received -- I mean, I don't mind. It is a letter from  
3 Dr. Shifrin, and I don't mind, but I believe that discovery was  
4 completed. And even though it concerns -- he should have asked  
5 you, and in a letter he asked you, but he did not at that time.  
6 I mean, it's your decision.

7 THE COURT: Well, yeah, I am going to allow it. I  
8 mean, he could have asked me back then to open up discovery.  
9 You're right about that. I mean, I think he originally didn't  
10 seek to depose Dr. Shifrin during the period where depositions  
11 were open because he didn't think that there was anything that  
12 merited a deposition in the records, and then he gets something  
13 that, you know, shifts the ground of the ADA claim. And also,  
14 you know, it's a little fishy that it wasn't originally  
15 produced. So I understand why defense counsel wants to do the  
16 deposition. It may be that there is a perfectly innocent  
17 explanation. I am not clear as to, you know, what it means that  
18 it was misfiled or how it was found or whatever. So I  
19 understand why defense counsel wants to ask those questions now.

20 The explanation that it was misfiled didn't come until  
21 after summary judgment was -- the summary judgment motion was  
22 filed in January, so I don't think there's been a lack of  
23 diligence here, so I am going to allow that one deposition to  
24 take place.

25 MR. GILANI: Well, let me ask -- let me ask you a

1 question. In your experience -- I cannot request more  
2 discovery, which was denied at the same time, but if you are --

3 THE COURT: Well, if there was something defendants  
4 produced after discovery closed that, you know, changed the  
5 landscape, you can ask me, but I am not aware of anything that  
6 was produced late by them.

7 MR. GILANI: Okay.

8 THE COURT: So moving on, the -- I have Mr. Gilani's  
9 letter requesting leave to appeal the summary judgment motions  
10 on the remaining claims. That's governed by Rule 54(b).  
11 There's been no attempt to argue why the standards of that rule  
12 are met here, and I don't think they are. So I am going to deny  
13 the motion for -- which is really for a Rule 54(b)  
14 certification. The Circuit really does not like piecemeal  
15 appeals, so unless there is something unusual about this case,  
16 which I don't see, we will resolve the remaining claim, and then  
17 Mr. Gilani can appeal my summary judgment ruling if he sees fit.  
18 So we need to schedule a trial on the one narrow issue  
19 that remains. Seems to me it won't take very long, but let me  
20 ask the parties how long they think the trial on that one claim  
21 will take.

22 MR. CAMPSSEN: Campsen. Your Honor, Mr. Campsen for  
23 Teneo. I would -- before discussing a trial, excuse me, Teneo  
24 is interested in mediation, so but I can put that on the back  
25 burner, but just putting that out there for the remainder of

1 this call.

2           As far as trial, we would anticipate it -- I mean,  
3 typically, pre-Covid I would say if it's a jury trial, two days.  
4 I don't know how long the jury selection will take, but I think  
5 if we can do a jury selection before lunch, then I think we  
6 could have our openings and get into the evidence that afternoon  
7 on the first day, and we could certainly have maybe two  
8 witnesses, depending if Dr. Shifrin is called in the plaintiff's  
9 case-in-chief and have closings on the second day, but I think  
10 to be safe, if jury selection goes at a normal rate, a normal  
11 pace, I think two days, but to be safe, going into a third day,  
12 so two and a half days I think would be a fair estimate.

13           THE COURT: So far during Covid, jury selection, if  
14 anything, has been going a little faster. I have a theory about  
15 why that is, which is: If -- you know, in the before times, if  
16 you wanted to get out of jury duty, you had to show up and make  
17 your case to the judge. Once Covid started, we obviously didn't  
18 want anybody who was sick or vulnerable to have to come to the  
19 building, so we started allowing people to make their case for  
20 Covid postponement by phone. So people who are trying to get  
21 out of jury duty call up and they say, you know, I am immuno-  
22 comprised or I don't feel well or whatever, and so the  
23 people who -- and they get an automatic postponement. So the  
24 people who show up are all willing to serve.

25           So we have been picking juries generally on the

1 pace -- at the same pace, maybe even a little faster in civil  
2 cases. It's taken a little longer in criminal cases because we  
3 just don't have the space to get as many jurors as we need in  
4 the building in one day, but for civil cases, we have been  
5 picking -- you know, a morning is usually plenty of time. So I  
6 will assume, give or take, half a week.

7           We need to build in some time for Dr. Shifrin's  
8 deposition. Why don't we say you will get that done by  
9 September 15th? Is that realistic?

10           MR. CAMPSSEN: I believe so, Your Honor. I think what  
11 I will do is draft the notice of deposition and the subpoena,  
12 contact Dr. Shifrin's office, and send it to him to get it  
13 noted, and then depending on his availability, of course, I will  
14 know the date and explain the Court's given us a deadline of  
15 September 15th, and then go by his schedule, but I assume within  
16 the next 30 days, that would be fine.

17           THE COURT: All right. So we could probably try this  
18 case before the end of the year. So let me -- or maybe in the  
19 first quarter of next year. Let's see, you will have the  
20 deposition by September 15th. So let me set some dates.

21           Joint pretrial order by October 15th.

22           MR. GILANI: Judge, what is a joint pretrial order? I  
23 am pro se, so I really don't know.

24           THE COURT: Yeah, you can look at my individual rules,  
25 and it explains what it is. Basically, it's each side has to

1 list all its exhibits, all its witnesses. It's basically a sort  
2 of roadmap for how the trial is going to go. So -- and you can  
3 start thinking about that now. You don't have to wait until  
4 September 15th. Whatever documents you are going to introduce  
5 or other exhibits, whatever witnesses you are going to call. It  
6 requires a bunch of different categories, what kind of damages  
7 you are seeking. So -- and that's all in my individual rules,  
8 which you can see on the website. You have to work together on  
9 it because it's one document. It's not one from each side.

10 MR. GILANI: Okay.

11 THE COURT: Then why don't we say motions in limine  
12 October 29th. A motion in limine is a motion that one side or  
13 the other makes before the trial asking for a pretrial ruling  
14 either that certain evidence should be admitted or certain  
15 evidence should be excluded.

16 So, for example, to use an example that I don't think  
17 applies here, if a witness had a prior criminal record, the  
18 party calling that witness might make a motion to say: The  
19 opposing party shouldn't be allowed to cross-examine that  
20 witness about the prior convictions or, you know, that's just  
21 one example of motions in limine. So any evidentiary issues  
22 that either side anticipates coming up during the trial, you  
23 should make a motion saying the evidence should be excluded or  
24 included.

25 You can also say, you know, for example -- again, to



1 use an example that's not present here -- in a fraud case, if  
2 the plaintiff is suing a defendant for fraud, and the defendant  
3 defrauded someone else, the plaintiff might make a motion  
4 saying: I should be allowed to prove up that this guy defrauded  
5 someone else to show that it's more likely that he defrauded me.  
6 So that would be a motion to admit some evidence. The other  
7 example I gave was a motion to exclude some evidence.

8           So I don't know if either party will have any motions,  
9 but if they do, make them by October 29th, and the other side  
10 should respond by November 12th.

11           Proposed jury instructions and voir dire questions,  
12 that is questions that the parties would like me to ask the  
13 potential jurors, also by November 12th. And I think what I  
14 will -- what we will do is we will say that the earliest  
15 possible date for trial is going to be -- well, you know what?  
16 I am thinking out loud. It really depends. What I do on the  
17 trial date depends on whether the doctor is going to testify.  
18 What I was about to say is our earliest trial date is going to  
19 be November 29th, and you will be on seven days' notice, meaning  
20 I will give you at least seven days' notice as to what your  
21 trial date is going to be. It will be no earlier than  
22 November 29th, but it might be later. But if you expect that  
23 the doctor is going to testify, I think I probably need to get  
24 you a firm date because doctors are notoriously difficult to  
25 schedule, and if you don't give them an exact time, you know,

1 weeks in advance, they say they can't come.

2           So let me ask Mr. Clark, my courtroom deputy: Do we  
3 have any window in December that would work and where jury  
4 selection dates are available? If not, this might have to slip  
5 into January.

6           MR. CAMPSSEN: Campsen, Your Honor. While Mr. Clark is  
7 looking, I do have a trial scheduled in Maryland beginning on  
8 November 22nd and extending into the following -- Thursday, I  
9 think the 25th is Thanksgiving, and it is extending and  
10 scheduled to extend into the following week until the 30th for  
11 planning purposes.

12           THE COURT: All right. So we will see if we have  
13 something that will be later in December so that you don't have  
14 back to back, but I feel like I might not even have a window  
15 because I have just scheduled some criminal trials in the last  
16 two days.

17           THE DEPUTY CLERK: Judge, yeah, December might not be  
18 good because we have something -- a criminal trial for  
19 December 6th, and a civil trial for December 13th.

20           THE COURT: All right. So let's -- and then we bump  
21 into the holidays. So let me look at -- we are going to have to  
22 do it in January. So I am going to say January 10th for jury  
23 selection and trial, but that's subject to change because  
24 depending on the Covid situation, we may need -- and I sure hope  
25 by January this surge is over, but I don't know that it will

1 be -- so we need to try the case in a Covid-safe courtroom. We  
2 have three of them in this building, courtrooms that are  
3 situated so that everybody can be spread out, but we have eight  
4 judicial officers vying for them. So what we have been doing is  
5 because the criminal cases take precedence, we have been setting  
6 the schedule with the criminal cases going first, and then we  
7 have civil cases as backup. On weeks where there is no criminal  
8 case going, then we are able to give a firm date for a civil  
9 case.

10           And then, you know, for example, if on January 10th  
11 there was a criminal case set to go, and you guys were the first  
12 backup, and then that defendant pleaded out in November, I would  
13 be able to tell you then, okay. We are definitely going  
14 January 10th. Or maybe there won't be any criminal case or any  
15 older civil case that wants that date, in which case -- which I  
16 will know in November, so I will be able to tell you again, you  
17 know, that's our date.

18           The way we have been doing is, you know, the judges  
19 sit down, and we schedule out the highest priority cases, and  
20 then we fill in the blanks with the remaining cases. This is  
21 going to be fairly low priority because it's a civil case, and  
22 it's not that old. But we have been getting to a lot of the low  
23 priority cases because, as you know, cases tend to settle once  
24 you give them a real trial date.

25           So January 10th, subject to change, you know, give or

1 take, and I will let you know more conclusively as soon as I  
2 know. We are generally setting the schedule for each quarter in  
3 the middle of the previous quarter. So we are putting in our  
4 bids for the last quarter of 2021 this week, and we will have  
5 our schedule by the end of the month for the last quarter. So  
6 it will be mid to late November that we will finalize the  
7 schedule for January. So I will let you know as soon as I know  
8 more.

9 Now let me revert back to something Mr. Campsen said.  
10 What about resolving this one remaining claim?

11 MR. CAMPSSEN: Campsen, Your Honor. I have discussed  
12 with my client potential mediation describing to them how the  
13 case has been narrowed, and I thought that in light of  
14 Mr. Gilani's motion to appeal the interlocutory orders that I  
15 didn't get authorization today to definitively go to mediation  
16 because I just wasn't sure what was going to happen, but they  
17 are interested in mediation because the case is so narrowed, and  
18 I think mediation may help explain to both parties exactly where  
19 the case stands now, how it's been streamlined, and the limited  
20 monetary damages that remain available, if any.

21 THE COURT: So your --

22 MR. CAMPSSEN: Certainly defendant would be available.

23 THE COURT: Your client would be willing to mediate  
24 just the one claim and allow Mr. Gilani to appeal as to the  
25 rest?

1 MR. CAMPSSEN: No. I misspoke, I think. No, Your  
2 Honor. The mediation -- the mediation would be as to resolving  
3 the final claim, but any settlement would have to be release of  
4 all claims. So we wouldn't settle the one and then allow appeal  
5 of the remainder.

6 THE COURT: Is that something you are interested in,  
7 Mr. Gilani?

8 MR. GILANI: So about -- for my clarification on what  
9 is the procedure for the mediation? And I would be interested,  
10 but I need to understand the procedure.

11 THE COURT: There are volunteer lawyers who, you know,  
12 are approved and trained by the mediation office of the court to  
13 conduct mediations, and a lot of them specialize in employment  
14 cases. The logistics of it are, I would do a referral to the  
15 mediation office. Then the mediation office would seek out a  
16 mediator, and this is all happening privately. I don't learn  
17 anything about it. I don't learn who the mediator is or any of  
18 that stuff, and the mediator would set up a meeting. Generally,  
19 they ask each side to submit sort of a pre-mediation statement  
20 so that the mediator can understand each side's position or  
21 sometimes the mediator talks to the parties on the phone  
22 separately, and then, you know, gets you together in a room and  
23 tries to see if the case can be resolved.

24 So right now, the only live claim is the failure to  
25 accommodate, and as Mr. Campsen pointed out, that is probably

1 going to result in a much smaller recovery than a successful  
2 pursuit of the remaining claims might have. So at this point,  
3 you will have to sort of balance what kind of luck you think you  
4 are going to have on appeal versus, you know, maybe getting some  
5 relief now because what Mr. Campsen is positing and not  
6 committing to is that if you can reach a dollar agreement, and  
7 you agree not to appeal, then you will get your satisfaction  
8 sooner, and it will save his client having to defend the  
9 decision on appeal.

10 Obviously, I think the decision is right, but that  
11 doesn't mean the Court of Appeals will. They usually -- you  
12 know, I am sure you understand that most appeals are an uphill  
13 battle, but sometimes judges make mistakes. So you will have to  
14 balance in your own mind whether you might be better off taking  
15 some settlement now and giving up your right to appeal or  
16 whether you think my decision is wrong enough that the Circuit  
17 is going to reverse it, and you will come out ahead.

18 The risk, obviously, is if they offer you a  
19 settlement, you turn it down, we go to trial on the last claim;  
20 you don't win, you bring the appeal, you don't win, then you  
21 have nothing. So, you know, there is risks and potential  
22 rewards for both sides. That's usually the formula for a  
23 successful settlement.

24 MR. GILANI: I am willing to do that. I take your  
25 word for it. You explained it to me, and I think that I want to

1 close out my -- this case, right? So I am willing to do that,  
2 and if you come up with some kind of mediation settlement, I  
3 would not go to appeal, so -- and I think you explained very  
4 well.

5 THE COURT: All right. Well, I will do a referral to  
6 mediation, and if you think you are getting somewhere in the  
7 mediation, and you want to pause the -- well, let me ask another  
8 question before we get to it.

9 What I described is the court volunteer mediation  
10 program. The other option would be to go back to Magistrate  
11 Judge Davison to try to resolve it. My sense is maybe a fresh  
12 start with an outside mediator would be more successful here,  
13 but I am certainly happy to send you back to Judge Davison if  
14 that's what the parties would prefer. Anybody haven an opinion?

15 MR. CAMPSSEN: Campsen, Your Honor. Sorry. Campsen,  
16 Your Honor. We would be okay with Judge Davison. I think we  
17 are hesitant to -- and maybe -- I can't speak for plaintiff, but  
18 maybe that would be his concern, too -- is to expand the fees in  
19 a private mediator. I think Judge Davison is familiar. I know  
20 there was some issues, you know, a lot of discovery issues going  
21 back and forth, but certainly he has a grasp of --  
22 unfortunately, the substance of the case I think to a certain  
23 extent.

24 THE COURT: Let me be clear, the mediators who you get  
25 through the court are free, and some of them are excellent.

1 They just do it as their pro bono.

2 MR. CAMPSSEN: Okay.

3 THE COURT: So it won't cost anybody anything.

4 Do you have a preference, Mr. Gilani? Do you want a  
5 volunteer mediator or Judge Davison?

6 MR. GILANI: Judge Davison.

7 THE COURT: You want to go back to Davison? I just  
8 didn't hear you. Did you say you want to go back to Judge  
9 Davison?

10 MR. GILANI: Judge Davison, yes. He has -- yes.

11 THE COURT: All right. Then I will refer you to Judge  
12 Davison for settlement, and if you think you are getting  
13 somewhere, and you want to pause this schedule that we have set  
14 today because you think you are going to resolve it, you can let  
15 me know that, but only if you think, you know, you are really at  
16 the finish line.

17 MR. GILANI: Judge, I have a question for you. Why  
18 don't we pause everything right now, and -- no? And let it go  
19 to Judge Davison to see how it goes. Then we can start, so we  
20 are not wasting time, if there is a mediation, right?

21 THE COURT: Well, I would be willing to do that if,  
22 you know, you are on the same ballpark, but maybe you are not on  
23 the same ballpark. And frankly, you know, there is nothing like  
24 a trial date looming to get the parties to focus. So in my  
25 experience, it's the trial date that leads the parties to



1 settle; and if you don't have that looming, it's not nearly as  
2 effective an exercise. But if you get -- if you are getting  
3 somewhere, you know, if your demand is not out of the realm of  
4 possibility or, you know, your conversation seems like it's  
5 getting somewhere, and the parties are in agreement that they  
6 want to pause the schedule or Judge Davison thinks it's a good  
7 idea, I would be willing to do that, but not -- not yet.

8 MR. GILANI: Thank you.

9 THE COURT: All right. I think that covers what we  
10 need to cover today. Anything else either side wants to raise?

11 MR. GILANI: No, Judge.

12 MR. CAMPSSEN: Campsen. No, Your Honor. Thank you.

13 MR. GILANI: Only thing I would not know when I come  
14 up with that pretrial order that how long it takes. I have to  
15 review your -- review what takes place and how, what I have to  
16 present. So, you know, it would be -- I can't give the days.  
17 It could be four days. It could be five days. It could be  
18 three days. It could be a day, but I think I have to review it,  
19 which I haven't reviewed anything. So I will get back to you on  
20 that.

21 THE COURT: Well, the information in the -- for the  
22 joint pretrial order, I think given the narrowed claims, is not  
23 going to be voluminous; and, you know, you have got 60 days  
24 until it's due, so I am sure you will be able to figure it out.

25 All right. Thank you both, and everybody stay well.

1 Bye-bye.

2 (Time noted: 11:18 a.m.)

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